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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KENNETH L. SCHROEDER,

Defendant.

No. C 07 3798 JW

SUPPLEMENTAL DECLARATION OF SHIRLI FABBRI WEISS IN SUPPORT OF MOTION TO DISMISS (Supplement to Declaration Filed on February 1, 2008)

Date: March 24, 2008
Time: 9:00 a.m.
Courtroom: 8
Judge: Hon. James Ware

I, Shirli Fabbri Weiss, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am admitted to practice before this honorable Court. I am lead counsel representing Defendant Kenneth L. Schroeder ("Schroeder") in this case. I have first hand knowledge of the events testified to in this declaration.

2. In its opposition memorandum as well as in the Declaration of Susan LaMarca, the SEC spends considerable time scolding the defense for not pursuing the strategy that the SEC apparently has concluded is the defense's appropriate or "promised" strategy, and in suggesting that the defense has somehow behaved inappropriately with regard to the filing of this Motion. There were no "promises" made to the SEC and there is no basis for the SEC's innuendo of any improper conduct on the part of Schroeder's counsel. Nonetheless, since the SEC makes an issue of the events leading to Schroeder's filing of the Motion to Dismiss and urges erroneous inferences on the Court, what follows is a summary of events leading to the filing of the Motion to Dismiss.

Pertinent Events Leading to the Filing of the Motion to Dismiss; The January 29, 2008 Discovery Conference Before Magistrate Judge Howard Lloyd; the February 12 Hearing on KLA and the KLA Witnesses' the Motions for Protective Order; Response to Statements Made in the Declaration of Ms. LaMarca Filed in Opposition to the Motion to Dismiss.

3. Shortly after the parties to this litigation were permitted to commence discovery, on October 19, 2007, Schroeder served document subpoenas on KLA-Tencor Corporation ('KLA"). KLA served Objections and Responses on November 8, 2007 and Amended and Supplemental Objections and Responses on December 14, 2007. Copies of the Subpoenas and the Amended and Supplemental Objections and Responses are attached hereto as Exhibits 17 and 18, respectively (the Exhibit numbers continue from the Exhibits identified and attached to my Declaration dated February 1, 2008 submitted in support of the Motion to Dismiss). KLA pervasively asserted the attorney-client privilege and work product protection as the bases for withholding numerous documents relevant to the claims and defenses in the case. Several meet

and confer conferences with counsel for KLA failed to resolve any privilege issues.

4. On November 12, 2007, Schroeder served subpoenas for documents on counsel to KLA's Special Committee, the law firm of Skadden Arps Slate, Meagher & Flom ("Skadden") (and on individual attorneys who had attended witness interviews in KLA's Special Committee options investigation). Skadden served Responses and Objections on behalf of the firm on December 10, 2007. Copies of the Subpoena to Skadden and its Responses and Objections are attached as Exhibits 11 and 12 to my February 1, 2008 Declaration filed in this motion. Skadden pervasively asserted the attorney-client privilege and work product protection as the bases for withholding documents relevant to the claims and defenses in the case. Several exchanges of correspondence and meet and confer conferences with counsel for Skadden failed to resolve any privilege issues.

5. On November 1, 2007, the SEC served a notice of the deposition of Elizabeth Harlan, a Skadden associate for an early December 2007 deposition and Schroeder thereafter cross-noticed Ms. Harlan's deposition for the same day. Ms. Harlan was one of the associates at Skadden who took notes at some of the witness interviews conducted by KLA's Special Committee, including the interview of Schroeder. Schroeder's counsel intended to question Ms. Harlan about her original interview notes and the later versions of interview memoranda (which KLA had turned over to the SEC but not to Schroeder) with respect to all of the interviews she attended. However, in correspondence, Skadden made clear that privilege objections would be asserted to many of the questions that were likely to be posed to Ms. Harlan and Skadden refused to produce Ms. Harlan's original notes of interviews conducted by the Special Committee. Accordingly, rather than take her deposition, we endeavored to get a clear statement from Skadden of its position. The decision to put off Ms. Harlan's deposition was mutually arrived at among counsel for the SEC, Mr. Schroeder and Skadden. If the deposition had gone forward, it would not have been completed because of privilege issues.

7. Following the defense's receipt of the responses to subpoenas served on KLA, Skadden, and the Skadden attorneys and our inability to resolve privilege issues through a meet and confer process, the defense intended to bring a Motion to Compel Discovery, and I so advised

the SEC, Skadden and KLA.

8. Schroeder also had noticed the deposition of the former General Counsel of KLA, Stuart Nichols, for Sunday, January 27, 2008 (Mr. Nichols specifically requested a weekend day for his deposition and both the SEC and Schroeder agreed to accommodate him). The defense considered trying to get a statement of KLA's position regarding privilege in lieu of Mr. Nichols' deposition but in discussions with Mr. John Hemann, counsel for KLA, it seemed to me that he equivocated on KLA's position and that trying to get a clear statement of KLA's position would be a lengthy process (as had been the process with Skadden), so we decided to go ahead with the deposition and in fact, we believe that at the deposition, as shown in the transcript to the deposition, Exhibit 9 to my Declaration filed on February 1, 2008 in this motion, Mr. Hemann set forth KLA's position regarding privilege.

9. The defense also noticed the depositions of other witnesses to statements of Nichols and Schroeder and of Berry, all necessary to the defense of Schroeder, including the depositions of KLA's former Chief Financial Officer John Kispert, its Vice President of Finance, Maureen Lamb and the former Chairman of the Board and a former CEO, Kenneth Levy.

10. In light of the defense's intention to bring a motion to compel discovery, on January 29, 2008 at the discovery conference conducted before Magistrate Judge Lloyd, I requested permission to combine briefs in support of separate motions we intended to file against KLA and Skadden who separately had asserted privileges in response to document and deposition subpoenas. As the defense team was completing the motion and I was personally reviewing the cases, I was offered authority demonstrating that Mr. Schroeder had a Constitutional Due Process right to defend the action unfettered and that it was not his burden to spend months and months litigating privilege, but rather the SEC's burden resolve those issues if it brought a case that so clearly implicated privileged communications.

11. I then consulted with my colleague at DLA Piper, Stan Panikowski, former clerk to Justice Sandra Day O'Connor, who has strong expertise in Constitutional Law and fundamental fairness principles implicated by Constitutional Law and the defense team then determined in good faith to bring the Motion to Dismiss instead of a Motion to Compel

Discovery. There was no nefarious purpose or delay involved. Once the decision was made we worked virtually non-stop to complete the Motion to Dismiss which we then filed on February 1, 2008 shortly after the deposition of former General Counsel Stuart Nichols, whose deposition I had believed was necessary foundation to the motion to compel (and also the motion to dismiss). We obtained March 24, 2008 as the earliest date for hearing on the Motion to Dismiss, available on this court's calendar (which allowed the SEC additional time to respond over and above that prescribed by the Rules). We had cleared the hearing date ahead of time with the SEC. We did not attempt to meet and confer regarding the Motion to Dismiss. In response to Ms. LaMarca's statement in her declaration regarding the SEC's view that we should have asked to meet and confer with it prior to filing a motion to dismiss, I am not aware of any rule that requires such a conference for such a motion. Contrary to Ms. LaMarca's characterization, the Motion to Dismiss is not a discovery motion.

12. Following Mr. Nichols' deposition (where he was instructed not to answer almost every question based on privilege), and the February 1, 2008 filing of Schroeder's Motion to Dismiss, on February 6, 2008, KLA and some of the KLA witnesses whose depositions we had noticed and Skadden filed Motions for Protective Orders to stay discovery entirely against the current and former employees of KLA and the attorneys representing the Special Committee (we had previously agreed to KLA's motion for an order shortening time so that KLA's Motion for a Protective Order could be heard). We opposed the motion on behalf of Schroeder. At the February 12, 2008 hearing on the Motions for Protective Order before Magistrate Judge Lloyd, the SEC complained about Schroeder's change of strategy from filing a motion to compel discovery to filing a motion to dismiss the Complaint. The court acknowledged in its opinion, however, that Schroeder was free to pursue the course he elected in the case. See Order Granting KLA-Tencor's Motion for A Protective Order, attached hereto as Exhibit 19, p. 4. The court declined to stay discovery entirely, but, granting KLA's Motion in part,[1] ruled that the depositions of witnesses implicating privilege could not be taken until privilege issues were resolved.

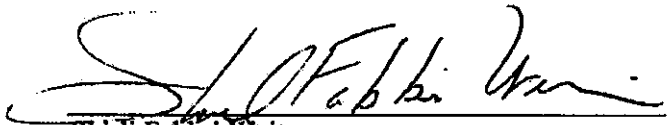
[1] The Court did not rule on Skadden's motion as it was filed untimely.

13. In a telephone conference call attended by counsel for the SEC and Counsel for KLA and myself and Mr. David Priebe of our office, conducted during the time we were awaiting Magistrate Judge Lloyd's ruling on KLA's Motion for a Protective Order, I asked KLA's counsel, John Hemann if a hearing on privilege issues before Magistrate Judge Lloyd would have resolved the privilege issues if KLA had lost. He responded: "only if Magistrate Judge Lloyd is the Supreme Court." This indicated to me that KLA would appeal an adverse ruling on privilege and that litigation of the privilege issues in this case would likely be lengthy and burdensome.

14. In short, there was no bad faith and no unnecessary delay in the defense's election of which motion to pursue in the case as a result of KLA's and Skadden's assertion of privilege. We indicated our prior intention to file a Motion to Compel Discovery to the SEC and to Magistrate Judge Lloyd which was true at the time, but we certainly did not promise the SEC anything. The Motion to Dismiss was filed in good faith and is based on the strong belief of the defense lawyers that the case should be dismissed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was signed in San Diego California on the date set forth below.

Executed on March 10, 2008.



Shirli Fabbri Weiss

I hereby attest that I have on file all holographic signatures for any signatures indicated by a "conformed" signature (/S/) within this e-filed document.

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